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 15 MCCARTHY, ANDREW POLLICK;
 16 DAVID MOORE, and CRISTINA
 17 OLIVAS

18 **UNITED STATES DISTRICT COURT**
 19 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

20 A.J.P. and A.M.P., minors by and
 21 through their guardian ad litem Cynthia
 22 Nunez, individually and as successor in
 23 interest to Albert Perez, deceased; and
 24 PATRICIA RUIZ, individually,

25 Plaintiffs,

26 v.

27 COUNTY OF SAN BERNARDINO;
 28 and DOES 1-10, Inclusive,

Defendant.

Case No. 5:22-CV-01291 SSS (SHKx)

*[Honorable Sunshine Suzanne Sykes,
 Magistrate Judge, Shashi H.
 Kewalramani]*

**DECLARATION OF DEPUTY
 DAVID MOORE IN SUPPORT OF
 DEFENDANTS' MOTION FOR
 SUMMARY JUDGMENT**

Filed concurrently with:

1. Notice of Motion and Motion;
2. Statement of Uncontroverted Facts;
3. Declaration of Kayleigh Andersen;
4. Declaration of Sergeant Gaytan;
5. Declaration of Corporal McCarthy;
6. Declaration of Corporal Olivas;
7. Declaration of Corporal Pollick;
8. Declaration of Deputy Stone;
9. Declaration of Sergeant Scalise;
- and
10. *[Proposed] Order*

Date: April 19, 2024

Time: 2:00 p.m.

Crtrm.: Courtroom 2, 2nd Floor

Action Filed: 07/22/2022

DECLARATION OF DEPUTY DAVID MOORE

I, **Deputy David Moore**, declare as follows:

1. I am a party to this action. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

2. On Sunday, August 29, 2021, at approximately 1900 on I received a text message from Sergeant Luke Gaytan requesting all members of the San Bernardino County Sheriff's Department Specialized Enforcement Division Team 1 ("SED Team") to respond to Zenda Street in Victorville for a barricade situation where the subject had threatened a female with a firearm, and that the subject was armed and still barricaded in the garage of a multi-unit complex where he did not live.

3. Sergeant Gaytan also notified the SED Team that a crisis negotiator, Negotiator Anthony Alcala, was also responding to the incident location.

4. Sergeant Gaytan had all members of the SED Team, which included Sergeant Gaytan, Corporal Pollick, Deputy Stone, Corporal McCarthy, Corporal Gary, Corporal Olivas, and myself, meet at the Victorville Library just west of the incident location for a briefing prior to arriving at the subject location.

5. During this briefing, the SED team learned that patrol was negotiating with the suspect, Albert Perez ("Perez"), who was seated on a stool at the rear of the garage behind a pool table and was in possession of a gun.

6. The SED Team also learned that the door from the garage to the home had been locked by the homeowner, and that both sides of the garage were contained by patrol units trying to de-escalate the situation and trying to convince Perez to surrender peacefully, but that he was refusing to put the gun down.

7. During this briefing, the SED Team also developed an operational plan, which included medical plans, gas plans, and less-lethal plans, before going to the incident location.

1 8. The SED Team's medical plan included requesting Victorville Fire
2 Department, American Medical Response, and air rescue, the sheriff's helicopter, to
3 be on standby in the event that there was a medical emergency. The BearCat and
4 Corporal Olivas' vehicles were also set up as medical extract vehicles.

5 9. The SED Team's gas plans included Corporal Pollick and I having
6 chemical agents should the need and opportunity to use them arise. Corporal Pollick
7 developed a chemical agent plan for the house. The SED Team developed numerous
8 less lethal plans to be used at the appropriate point if the opportunity presented itself.

9 10. The SED Team's operational plan included containing both sides of the
10 garage, with McCarthy, Olivas, and Stone to be positioned on the southeast corner of
11 the garage, with Corporal Olivas with a shield and her pistol, Corporal McCarthy with
12 lethal cover, and Deputy Stone with a less lethal 40 mm multi-launcher. On the other
13 side, Corporal Pollick, Sergeant Gaytan, and I were to be positioned on the southwest
14 corner of the garage, with Sergeant Gaytan with a less lethal launcher, Corporal
15 Pollick held lethal cover, and I with a shield and my pistol.

16 11. Additionally, the SED Team was going to position the BearCat, which
17 is an armored rescue vehicle, in the driveway and face it towards the garage to light
18 up the garage because it was getting dark.

19 12. Sergeant Gaytan made it clear to the SED Team that if the suspect was
20 to separate himself from the firearm, the team could not allow him to gain access back
21 to that firearm because we did not want him to be able to shoot at us or any members
22 of the public.

23 13. During the briefing, the SED Team learned that there was a family who
24 stayed in their home in the northwest corner of the multi-unit complex. The SED
25 Team made contact with the family, and the family decided to stay in the home as
26 there was an elderly female at the home who was not easily mobile, and the SED
27 Team advised the family to shelter in place.

1 14. Prior to the incident, we also received photos of Perez sitting on a stool
2 in the garage via text message, which were taken when members of patrol and
3 Negotiator Alcala were on scene attempting to gain Perez's compliance before the
4 SED Team took our positions. Attached as Exhibit "K" to this Declaration are true
5 and correct copies of photos I received via text message on August 29, 2021 that
6 capture Perez in the garage while members of patrol were on scene.

7 15. The SED Team arrived to the incident location with the BearCat and met
8 with the patrol sergeant to gain additional information. The SED Team learned that
9 Perez was kind of nodding off, he was kind of lucid, and that it was unclear if he was
10 under the influence of any narcotics or alcohol.

11 16. Due to the patrol deputies being fatigued after hours of negotiations and
12 attempts to gain compliance from Perez, the SED Team took over and took their
13 assigned positions on the corners of the garage as was discussed in briefing.

14 17. During the incident, Negotiator Alcala was the assigned crisis negotiator
15 and attempted negotiations with Perez to gain his compliance. Once Perez started to
16 move towards the front of the garage where the SED Team was waiting, Sergeant
17 Gaytan started to give him commands so that we could safely take him into custody.

18 18. Since the academy, I was trained in accordance with San Bernardino
19 County Sheriff's Department Policy 3.608 The Use of Lethal Force that the use of
20 lethal force is justified to protect myself or others from what I reasonably believe to
21 be an immediate threat of death or serious bodily injury.

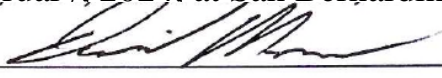
22 19. After the lethal force encounter, the SED Team used a robot to see into
23 the garage. Once the SED Team confirmed that Perez was not moving, the SED Team
24 approached Perez. Deputy Stone saw the firearm sticking out from under Perez's
25 stomach and kicked it away from him so that Corporal Pollick and Corporal McCarthy
26 could start to provide medical aid.

27 ///

28 ///

1 I declare under penalty of perjury under the laws of the United States of
2 America that the foregoing is true and correct.

3 Executed on this 27th day of February, 2024, at San Bernardino, California.

4 
5 Deputy David Moore

MK MANNING | KASS

Exhibit “K”





PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 801 S. Figueroa St, 15th Floor, Los Angeles, CA 90017-3012.

On March 1, 2024, I served true copies of the following document(s) described as **DECLARATION OF DEPUTY DAVID MOORE IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** on the interested parties in this action as follows:

LAW OFFICES OF DALE K. GALIPO

Dale K. Galipo, Esq.
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*ATTORNEYS FOR PLAINTIFFS, A.J.P.,
AND A.M.P.. ET AL.*

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on March 1, 2024, at Los Angeles, California.

Maria J. Castro